IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 909 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI MOHANBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 909 of 2000

MS PURVI AIYAR for

MR CHETAN K PANDYA for Petitioner No. 1

MR SAMIR J. DAVE, APP for Respondents.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/04/2002

ORAL JUDGEMENT

1. The petitioner has filed the present petition for quashing and setting the impugned externment order dated 5-9-2000 passed by the respondent no. 3.

2. A notice for externment was issued against the petitioner on 31-8-1999 by the Assistant Police Commissioner (I) Division, Ahmedabad City u/s 59 of the Bombay Police Act, 1951 calling upon him to state as to why externment order should not be passed against him. The petitioner filed his reply to the said notice on 14-9-1999. Thereafter, the externment proceedings were initiated by the authority wherein the petitioner examined 6 to 7 witnesses. Ultimately, the respondent no. 3 passed the externment order dated 5-9-2000 externing the petitioner from Ahmedabad City and also from Ahmedabad Rural, Gandhinagar, Kheda and Mahesana Districts for a period of two years. The impugned externment order was served upon the petitioner on 13-10-2000 directing him to leave aforesaid areas within 48 hours.

3. I have heard learned counsel for the petitioner and Mr. Samir Dave, learned A.P.P. for the respondents.

4. Learned counsel for the petitioner has argued that the show cause notice has been issued on 31-8-1999 and the externment proceedings were started and the same were concluded in September, 1999 and ultimately impugned externment order came to be passed on 5-9-2000. She has further argued that there is delay in passing the impugned order for a period of about one year. She has also argued that there is a delay in passing the order which has not been satisfactorily explained by the authority and hence the impugned externment order is required to be quashed and set aside. She has further argued that the petitioner has been externed from the adjoining Districts of Ahmedabad. The notice and impugned externment order do not disclose the ground for such action and therefore also the impugned impugned order is illegal and bad in law. She has contended that the notice is vague so far as period, time and the place are concerned no ground has been mentioned in the notice externing the petitioner from nearby districts and hence notice is illegal and consequently the impugned externment order is bad and deserves to be quashed and set aside.

5. The first point to be decided by this Court is whether the present petition is maintainable or not on the ground of not availing alternative remedy of appeal to the State Government. It is true that in this case, though the alternative remedy of filing the appeal against the impugned externment order before the State Government is available to the petitioner, the petitioner

has not exhausted the same but has approached directly to this Court by way filing the present petition. According to her, this point has already been decided by a Division Bench of this Court in the case of Chandulal Chhotalal Shah Vs. Union of India, reported in 2000 (1) G.L.H. 18, wherein it was held as under :

> "Now so far as the jurisdiction of Article 226 of the Constitution is concerned, it cannot be disputed that even if alternative remedy is available, this Court has jurisdiction to entertain the petition. Avail of alternative remedy is one of the factors this court may take into account. In other words, it is a question of discretion and not of jurisdiction."

In these circumstances, there is no substance in the above referred point since it has been dealt with and decided by the Division Bench of this Court.

6. Learned counsel for the petitioner has further argued that the show cause notice has been issued on 31-8-1999 and the externment proceedings were started and the same were concluded in September, 1999 and ultimately impugned externment order came to be passed on 5-9-2000 and therefore, there is delay of about one year in passing the impugned order. The said delay has not been satisfactorily explained by the authority and hence the impugned externment order is required to be quashed and set aside.

7. The other point raised by the learned advocate for the petitioner is covered by the judgment in the case of Mustufamiya Pirsahedmiya Saiyad Vs. State of Gujarat & Anr., reported in 1999 (1) GLH 913 more particularly head note-B, paras - 7 and 8. She has taken me through the show cause notice and the impugned order passed by the Policy Commissioner, Ahmedabad City.

8. Learned A.P.P. for the State has argued in support of the order passed by the authority concerned. I have gone through the show cause notice, the order of externment passed by the Police Commissioner, Ahmedabad City and also the judgment which, the learned counsel for the petitioner has relied upon, more particularly in para - 7, which reads as under :-

> "Another instance of non-application of mind while issuing show - cause notice is exhibited from the fact that out of the remaining two offences mentioned in the grounds of detention,

only one offence can be said to be punishable under Chapter XVI or XII of the Indian Penal Code. Offence at Serial No. 3 is neither punishable under Chapter XVI nor under Chapter XVII of the Indian Penal Code. If the offence at Serial No. 3 is not punishable under these two chapters, its recital in the show - cause notice will again expose non-application of mind by the externing authority. Then remains only one offence mentioned at Serial No. 2 which was committed in the year 1993. It was argued by the learned counsel for the petitioner that so far only investigation is going on in this offence and neither charge-sheet has been submitted nor trial is pending. Thus, this offence has become stale and after about 5 years, the show-cause notice on the basis of this offence could not have been issued which also exposes non-application of mind. Externment orders are passed considering the imminent requirement that the externee should be externed so that he may not be able to continue his notorious and objectionable activities."

9. It appears that the contention raised by the learned advocate for the petitioner is squarely covered by the aforesaid judgment. It has been been further held in para 8 of the aforesaid judgment, as under :

"Another non-application of mind in the show cause notice is exposed from the concluding portion where the externing authority has mentioned that the petitioner should be externed from districts of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Vadodara. No reason has been given in the show-cause notice why externment from these districts was proposed when the activities of the petitioner were confined only to the district of Ahmedabad Rural.

The externing authority under S. 56 of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. the criteria for passing such an order is provided for in S. 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his

own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of Vrajlal Mohanlal V. District Magistrate, Rajkot and another reported in G.L.R. 807 can be referred on the point."

10. It is reflected from the order that no reasons have been given in the show cause notice as to why the petitioner has been externed from the districts shown in the show cause notice when the activities of the petitioner has been restricted only to Ahmedabad city stated in the impugned notice. As the petition succeeds in these grounds, she not pressed other grounds.

11. In view of the foregoing reasons, this petition is allowed. The impugned externment order dated 5-9-2000 passed against the present petitioner by the Respondent No. 3 - Dy. Police Commissioner, Zone-III Ahmedabad City, Ahmedabad, is quashed and set aside. Rule is made absolute. D.S. is permitted.

(R.P. Dholakia, J.)

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/JVSatwara/